

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID D. HARRIS,

No. C 09-2362 MHP (pr)

Petitioner,

**ORDER OF DISMISSAL**

v.

PEOPLE OF THE STATE OF  
CALIFORNIA,

Respondent.

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This action was commenced when David D. Harris filed a "prayer for relief motion" to challenge the sentence he received upon a 1999 conviction from the Alameda County Superior Court for several sex offenses. The court sent him a form notice, telling him he had to file within thirty days a petition for writ of habeas corpus to commence the action. Harris then filed a request for an extension of time, stating that he needed extra time to file that petition because he had been moved to a new prison.

This is not Harris' first challenge to his 1999 conviction. He also challenged it in an action filed in 2007, Harris v. Yates, No. C 07-808 MHP, that was dismissed on January 3, 2008, as untimely filed. Harris did not appeal from the order of dismissal.

A second or successive petition may not be filed in this court unless the petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. 28 U.S.C. § 2244(b)(3)(A).

Harris has not obtained the necessary order from the Ninth Circuit permitting him to file a second or successive petition. This court will not entertain a new petition from Harris

1 until he first obtains permission from the Ninth Circuit to file such a petition. This action is  
2 DISMISSED without prejudice to Harris filing a petition in this court after he obtains the  
3 necessary order from the Ninth Circuit.

4 If Harris wants to attempt to obtain the necessary order from the Ninth Circuit, he  
5 should very clearly mark the first page of his document as a "MOTION FOR ORDER  
6 AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE  
7 PETITION PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)" rather than labeling it as a habeas  
8 petition because the Ninth Circuit clerk's office is apt to simply forward to this court any  
9 document labeled as a habeas petition. He also should mail the motion to the Ninth Circuit  
10 (at 95 Seventh Street, San Francisco, CA 94103), rather than to this court. In his motion to  
11 the Ninth Circuit, he should explain how he meets the requirements of 28 U.S.C. § 2244(b).

12 Harris' request for extension of time is DENIED. (Docket # 4.) There is no need for  
13 him to file a habeas petition form in addition to his "prayer for relief motion" because the  
14 petition (as well as the prayer for relief motion) cannot be entertained unless and until he  
15 obtains permission from the Ninth Circuit.

16 The clerk shall close the file.

17 IT IS SO ORDERED.

18 DATED: July 1, 2009

  
Marilyn Hall Patel  
United States District Judge